where testator, by codicil, after the death of one brother appointed a son of such brother executor in place of his father, such child would take. *Dent et al.* v. *Dent et al.* (S. C., 1920), 102 S. E. 715.

As a general rule, the law favors the construction of a devise which will prevent its lapsing. *Kamps Ex.* v. *Hollenberg,* 8 Ky. L. Rep. 529; the intent of the testator will ordinarily prevail in the construction and disposition of a devise. *Brattle Square Church* v. *Grant,* 3 Gray (Mass.) 142, 63 Am. Dec. 725. This intent is to be sought for in a consideration of the entire instrument in view of all the attendant circumstances. *German* v. *German,* 27 Pa. St. 116, 67 Am. Dec. 451. At the common law, on the death of a devisee or legatee, his share of the estate would lapse and be disposed of under the rules of intestacy. 2 REDFIELD ON WILLS, 157. This was true, though the bequest read to his brother, his heirs and assigns where the legatee left several children. *Thornley* v. *Kershaw,* 109 Ill. App. 113; or where the apparent result of the intestacy would be to increase the portion of one already provided for. *Magnuson* v. *Magnuson,* 197 Ill. 496; or where the intent to include the children of legatees might be fairly presumed, but no provision had been made for such an exigency as the death of a devisee. *Cureton* v. *Massey,* 13 Rich. (S. C.) 104. If, however, the devise was to a class jointly, the death of one would result in survivorship. *Jackson* v. *Roberts,* 14 Gray (Mass.) 546; or if the legacy was given to discharge an obligation of the testator it will go as directed. A large number of states, of which the following are examples, have by statute done away with this lapsing where the devise is to direct offspring. *Moore* v. *Hayden,* 82 Me. 227; REV. ST., c. 74, Sec. 10; *Cheney v. Selman,* 71 Ga. 384; CODE, Sec. 2462; *Harris* v. *Harris,* 12 Gill & J. (Md.) 474, Act of 1810, c. 34. Some have extended it to cover bequests to other lineal descendants, but not to collateral relatives. *Gordon* v. *Pendleton,* 84 N. C. 98, REV. CODE, N. C., c. 119, Sec. 28; *Jones* v. *Jones,* 37 Ala. 646, CODE OF ALABAMA, Sec. 1605; *Bishop* v. *Bishop,* 4 Hill (N. Y.) 138, 2 REV. ST., p. 66; *Maxwell* v. *Featherstone,* 83 Ind. 339, 2 REV. ST. (1876), p. 573, REV. ST. (1881), Sec. 2571. Even where the devise is to a class as tenants in common it seems the devise lapses. *Davis Heirs* v. *Taul,* 36 Ky. 51; *Huston* v. *Read,* 32 N. J. Eq. 591. In *In re Barr's Estate,* 2 Pa. 428, testator devised all his estate to his seven brothers and sisters, naming them, "or their survivors." At the time of making his will four of them were dead, leaving issue alive at the time, and this fact was known to him. It was there held that the word "survivors" meant representatives, since this, the court found, would more nearly approximate testator's intention, and it was obvious that the will had been drawn by an illiterate man. The majority in the instant case contend the codicil, in view of the whole scheme of the will, indicated testator's intent to substitute the son. Since there is no statement or direct implication that he shall be so substituted, the case is to that extent an extension of the general rule.

WILLS—REVOCATION BY DIRECTION TO ATTORNEY TO DESTROY.—A letter was written by testatrix to her attorney, who had custody of her will, directing

him to destroy it. This note to him was signed by two witnesses in the manner required by statute for revocation of a will by other writing. Her attorney, confined in a hospital at the time and until after her death, made no effort to carry out the directions, although he was informed as to the contents of the letter. DECEDENT ESTATE LAW, Sec. 34; LAWS OF 1909, c. 18; CONSOL. LAWS, c. 13, provides a will may be revoked by other writing of testator *"declaring such revocation,"* and executed with the same formalities with which the will itself was required to be executed; or may be revoked by burning, tearing, cancelling, obliterating, or destroying, with intent and for the purpose of revoking same, "by the testator himself, or by another person *in his presence,* by his direction and consent." *Held,* not a revocation *ipso facto* within the statute, but a mere authority to her attorney to destroy. *In re McGill's Will,* 181 N. Y. S. 48.

At first sight this decision, under the New York statute, seems to be correct, inasmuch as testatrix did not declare "such revocation" on the face of this letter, duly executed in accordance with the requirements of the statute. But in order to reach this result one must proceed upon the theory that testatrix intended a *revocation by destruction* of the will in the future, and not a *present revocation* by the execution of this writing in accordance with the requirements of the statute. The testatrix, presumed to know the law, could not have intended a subsequent *revocation by destruction,* because this would have been impossible, unless done "by testator himself, or by another person *in his presence,* by his direction and consent." She could not have contemplated this event, because she knew at the time that her attorney was confined in the hospital. Inasmuch as there is only one alternative left under the statute, it seems that testatrix must have intended *present revocation* by this writing duly executed according to the requirements of the statute. This view is supported by the fact that she had two witnesses, as required by the statute for revocation, and as would not have been necessary to merely confer authority on the attorney to revoke. Then, too, it is only natural that she should want to have her revoked will destroyed so as to prevent any inconvenience or contest arising thereafter. This explains her reason for directing the destruction of the will, not to complete the revocation, but merely to put *the already revoked will* out of the way. Thus it seems that the court (by a three to two decision) relied rather upon the wording of the statute than upon its purpose, and defeated the testatrix's present intention to revoke, which had been put into writing as required by the statute for revocation. It is to be hoped that the Court of Appeals will rectify this error of the Supreme Court of New York, and will render their decision in accordance with the view that such directions show a present intent absolutely to revoke, and amount to a revocation *ipso facto.* The English cases support this view, and no other cases directly in point have been cited for the contrary view. *Walcott* v. *Ochterlony,* 1 Curt. 580; *Matter of Goods of Durance,* L. R. 2 P. & D. 406; *Maharajah Pertab Narain Singh* v. *Maharanee Subbhao Kooer,* L. R. 4 Ind. App. 228; *Matters of Eyre,* 2 Ir. R. [1905], 540. It is true that the English statute as to revocation (1 VICT. 26, Sec. 20) may be dis-

tinguished in wording from the above New York statute,—stating a will may be revoked by an instrument *"declaring an intention to revoke,"*—but it seems that this is really a distinction without a difference. The real and substantial requirement is that there be a *present intention to revoke,* manifested in such manner as is required by the statute on revocation,—and it seems that here we have such a case under either the English or the New York statute.